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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/920,910
Filing Date: August 02, 2001
Appellant(s): MOSTAFA, MIRAJ

Joseph V. Gamberdell, Jr. (Reg. No. 44,695)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 31 August 2007 appealing from the Office action mailed 13 September 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Broussard (U.S. 6,269,483 B1)

Luzeski et al. (U.S. 6,430,177 B1)

Parasnis et al. (U.S. 6,728,753 B1)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 21-59 rejected under 35 U.S.C. 103(a) as being unpatentable over Luzeski et al. (U.S. 6,430,177 B1) hereinafter referred to as Luzeski in view of Parasnis et al. (U.S. 6,728,753 B1) hereinafter referred to as Parasnis and Broussard (U.S. 6,269,483 B1).

a. As per claims 21, 37, 45, 47, 48, 55, and 59 Luzeski teaches: receiving, by a messaging server, content, including a streamable media component and information describing the streamable media component (abstract, lines 47-52 of column 5, and Fig. 1); and sending information describing the streamable media component from the messaging server to a recipient terminal (lines 35-39 of column 11 and lines 7-29 of column 20).

Luzeski does not explicitly teach: forming a streaming session between the messaging server and the recipient terminal using the information describing the streamable media component; a wireless terminal; and the streamable media component is constructed to be presentable to a recipient while the streamable media component is being transmitted from the messaging server to the recipient wireless terminal or while the wireless messaging device is receiving the streamable media component.

However, regarding "forming a streaming session between the messaging server and the recipient terminal using the information describing the streamable media component," Parasnis discloses: "In addition to viewing presentations in the forgoing manner, recent advancements in streaming format technology have made it possible to receive audio and video content via live broadcasts over the Internet and other network environments," (lines 35-39 of column 2). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to form a streaming session between the messaging server and the recipient terminal using the information describing the streamable media component. "As opposed to conventional network file transfer schemes, streaming format technology allows content to be continuously "streamed" to one or more computers over a network rather than being first downloaded as a file," (lines 39-42 of column 2 in Parasnis). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to form a streaming session between the messaging server and the recipient terminal using the

information describing the streamable media component in the system as taught by Luzeski.

Regarding "a wireless terminal," Broussard discloses: "The terminal 10 may also include a modem and wireless transceiver 38, coupled to the bus 31. The wireless transceiver 38 may also be coupled to the network 22," (lines 33-36 of column 5). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to have the terminal wireless. Not only is this extremely obvious in the art, Broussard provides the motivation: "In this event, the wireless transceiver may include an antenna for exchanging video and audio stream data with a cellular network pursuant to a protocol such as CDPD or H.324. Typically, in this configuration, the terminal 10 will be a hand-held communications or computing device or portable computer," (lines 36-42 of column 5 in Broussard). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to have the terminal wireless in the system as taught by Luzeski.

Regarding "the streamable media component is constructed to be presentable to a recipient while the streamable media component is being transmitted from the messaging server to the recipient wireless terminal or while the wireless messaging device is receiving the streamable media component," Parasnis discloses: "In addition to viewing presentations in the forgoing manner, recent advancements in streaming format technology have made it possible to receive audio and video content via live broadcasts over the Internet and other network environments," (lines 35-39 of column 2). It would have been obvious to one of ordinary skill in the art at the time of the

appellant's invention to have the streamable media component constructed to be presentable to a recipient while the streamable media component is being transmitted from the messaging server to the recipient wireless terminal or while the wireless messaging device is receiving the streamable media component. "As opposed to conventional network file transfer schemes, streaming format technology allows content to be continuously "streamed" to one or more computers over a network rather than being first downloaded as a file," (lines 39-42 of column 2 in Parasnis). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to have the streamable media component constructed to be presentable to a recipient while the streamable media component is being transmitted from the messaging server to the recipient wireless terminal or while the wireless messaging device is receiving the streamable media component in the system as taught by Luzeski.

b. As per claim 22, Luzeski teaches: the messaging server receives the streamable media component and the information describing the streamable media component from a sending terminal (abstract, lines 47-52 of column 5, and Fig. 1).

c. As per claim 23, Luzeski teaches: the messaging server receives the streamable media component and the information describing the streamable media component in separate messages (lines 5-16 of column 12).

d. As per claim 24, Luzeski teaches: the content includes at least one non-streamable component ("e-mail" in lines 29-33 of column 1).

e. As per claim 25, Luzeski does not explicitly teach: the streaming session is formed under one of the following protocols: HTTP and RTSP. However, Broussard discloses: "The packetized data may be transmitted using a plurality of protocols including RTP, RTSP, H.323 among others," (lines 26-28 of column 4). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to create the streaming session using one of HTTP and RTSP. In addition to h.323, any other suitable protocol may be used for exchanging audio and video stream data with the network 22. Other examples include the real-time transport protocol (RTP), the real-time streaming protocol (RTSP) among others," (lines 29-33 of column 5 in Broussard). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to create the streaming session using one of HTTP and RTSP in the system as taught by Luzeski.

f. As per claim 26, Luzeski does not explicitly teach: generating the streamable media component at a sending terminal. However, Parasnis discloses: "A typical example illustrating the use of streaming format technology is a live Internet concert, in which audio and video equipment at the performance site produce signals that are converted into a digital format in real- or near-real-time (or are already in a digital format if digital camera equipment is used), and the digital content is converted into an appropriate streaming format and broadcast to a large audience accessing the concert via an Internet Web page," (lines 43-50 of column 2). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to generate the streamable media component at a sending terminal. "In addition to

concerts, streaming technology is presently used for broadcasting other types of live events, including presentations," (lines 50-553 of column 2 in Parasnis). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to generate the streamable media component at a sending terminal in the system as taught by Luzeski.

g. As per claim 27, Luzeski teaches: streaming the streamable media component to the messaging server (abstract, lines 47-52 of column 5, and Fig. 1). Luzeski does not explicitly teach: a streamable media component generated at the sending terminal. However, this limitation is rejected in the same manner as discussed in the rejection of claim 26.

h. As per claim 28, Luzeski does not explicitly teach: the step of sending the information describing the streamable media component from the messaging server to the recipient wireless terminal takes place before generation of the streamable media component is complete. However, Parasnis discloses: "The one or more HTML files comprising the presentation slides are sent from the local computer to the NETSHOW.TM. server, which then broadcasts the files to the receiving computers, preferably using a multicast broadcast," (lines 30-33 of column 5). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to send the information describing the streamable media component from the messaging server to the recipient wireless terminal takes place before generation of the streamable media component is complete. "The multicast broadcast is performed using a relatively high bandwidth (preferably corresponding to a substantial portion of the available bandwidth

of the receiving computers), prior to the start of the presentation, to enable the HTML files to be cached by the browser application programs of the receiving computers," (lines 34-39 of column 5 in Parasnis). It is for this reason that one of ordinary skill in the art at the time of the appellant's invention would have been motivated to send the information describing the streamable media component from the messaging server to the recipient wireless terminal takes place before generation of the streamable media component is complete in the system as taught by Luzeski.

i. As per claim 29, Luzeski teaches: step of sending a notification message from the messaging server to the recipient terminal to inform the recipient wireless terminal that the content is available f or retrieval by (lines 35-39 of column 11 and lines 7-29 of column 20). A recipient wireless terminal is discussed above in the rejection of claim 20.

j. As per claim 30, Luzeski teaches: sending the information describing the streamable media component from the messaging server to the recipient terminal within a notification message (lines 35-39 of column 11 and lines 7-29 of column 20). A recipient wireless terminal is discussed above in the rejection of claim 20.

k. As per claim 31, Luzeski teaches: the streaming session is formed after the recipient terminal has received the notification message (lines 35-39 of column 11 and lines 7-29 of column 20). A recipient wireless terminal is discussed above in the rejection of claim 20.

l. As per claim 32, Luzeski teaches: the streaming session is formed at discretion of the user (lines 54-56 of column 1).

m. As per claim 33, Luzeski teaches: messaging server comprises a content server, the content server receiving the streamable media component from a sending terminal and transmitting the streamable media component to the recipient terminal (lines 46-53 of column 5). A recipient wireless terminal is discussed above in the rejection of claim 20.

n. As per claim 34, Luzeski teaches: implementing the method as part of a multimedia messaging service (MMS) (abstract and lines 23-34 of column 2).

o. As per claim 35, Luzeski does not explicitly teach: multicasting the streamable media component to at least one other recipient in addition to the recipient terminal. However, Parasnis discloses: "During the presentation, the ASF stream comprising the live content and the slide display commands are sent to the network server, which then broadcasts the ASF stream to the receiving computers," (lines 39-42 of column 5). It would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to multicast the streamable media component to at least one other recipient in addition to the recipient terminal. Motivation for this limitation is stated above (allowing multiple users access to the media stream). A recipient wireless terminal is discussed above in the rejection of claim 20.

p. As per claim 36, Luzeski teaches: the messaging server receives the streamable media component within a multimedia message (lines 23-34 of column 2).

q. As per claim 38, Luzeski teaches: means for transmitting the streamable media component in sequential sub-parts to the recipient terminal during the streaming

session (line 66 of column 20 through line 5 of column 21). A recipient wireless terminal is discussed above in the rejection of claim 37.

r. Claims 39-44, 46, 49-54, and 56-58 contain limitations similar to those disclosed in claims 21-38, 47-48, 55, and 59, differing only in statutory category of invention (server, system, device, computer readable medium, etc.) and are rejected for the same rationale.

(10) Response to Argument

Appellant argues – Regarding claim 21, Luzeski does not disclose that the streamable media component is constructed to be presentable to a recipient while being transmitted from a messaging server to a recipient wireless terminal (argument 1 on pages 11-12 of Appeal Brief).

In response to the above argument, the appellant has ignored the fact that all three of the cited references were incorporated in the rejection of this claim under 35 U.S.C. 103(a). First, the appellant argues that Luzeski fails to disclose a streamable media component. While Luzeski does not explicitly teach ***streaming*** the streamable media component, it does in fact teach ***receiving*** a streamable media component. Therefore, the appellant's argument that Luzeski does not disclose a streamable media component is false. The examiner points out that the Parasnis reference was relied upon for teaching of: presenting the streamable media component to the recipient while it is still being transmitted: "In addition to viewing presentations in the forgoing manner, recent advancements in streaming format technology have made it possible to receive

audio and video content via live broadcasts over the Internet and other network environments," (lines 35-39 of column 2 of Parasnis). As for Luzeski teaching a streamable media component, the appellant is directed to lines 6-13 of column 3 which describe transmitting video and lines 14-16 of column 17 which describe audio content, both of which are clearly recognizable as "streamable media" by one of ordinary skill in the art. Lines 58-67 of column 24 specify audio and line 2-9 of column 25 specify the MPEG video type as a content type which, again, should be readily recognizable as specifying streamable media.

Appellant argues – Regarding claim 21, Luzeski does not teach streamable media components (argument 2 on page 12 of Appeal Brief). This argument is fully addressed above with respect to argument 1.

Appellant argues - Regarding claim 21, Luzeski does not teach the streamable media component as constructed to be presentable to a recipient while being transmitted from a messaging server to a recipient wireless terminal (argument 3 on pages 12-13 of Appeal Brief).

In response to the above argument, the examiner points out that Parasnis, not Luzeski was relied upon for the rejection of this limitation. Again, Parasnis discloses: "In addition to viewing presentations in the forgoing manner, recent advancements in streaming format technology have made it possible to receive audio and video content via live broadcasts over the Internet and other network

environments," (lines 35-39 of column 2). The viewing of **live** broadcasts over the Internet explicitly requires that the audio/video is streamed, otherwise, it is not a truly **live** broadcast. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to form a streaming session between the messaging server and the recipient terminal using the information describing the streamable media component. "As opposed to conventional network file transfer schemes, streaming format technology allows content to be continuously "streamed" to one or more computers over a network rather than being first downloaded as a file," (lines 39-42 of column 2 in Parasnis). From this cited portion of Parasnis, one of ordinary skill in the art at the time of the appellant's invention would have easily been motivated to combine the teachings of Parasnis (streaming data) with the system of Luzeski.

Appellant argues – Regarding claim 21, Parasnis does not teach receiving by a messaging server, content including a streamable media component and information describing the streamable media content. The appellant further argues that Parasnis does not receive a streamable component, but instead encodes a set of slides into an advanced server file stream format only during presentation (argument 4 on pages 13-14 of Appeal Brief).

In response to the above argument, the examiner points specifically to lines 13-15 of column 4 in Parasnis which disclose: "In other instances, the live content will also comprise visual aspects of the presentation, such as a view of the presenter during the live presentation." Examiner notes that a view of the presenter during a ***live***

presentation could not possibly be presented as a set of slides and is inherently streamed. Live presentations, as a rule and by definition, must be streamed to be viewed in real-time.

Appellant argues – Regarding claim 21, Broussard fails to teach the features missing from Luzeski and Parasnis (argument 5 on pages 14-15 of Appeal Brief).

In response to the above argument, the examiner points out that Broussard was incorporated in the rejection to obviate the use of wireless connections as opposed to wired connections. Since the appellant provides no argument towards this basis and merely builds upon the preceding arguments by stating that Broussard does not teach the limitations argued in points 1-4 above, the appellant's arguments are rendered moot because no evidence was provided to show that Broussard does not teach a wireless connection that may be incorporated into the system of Luzeski and Parasnis.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

mm MM

19 November 2007

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